

May 28, 2008

**VIA ELECTRONIC FILING**

Ms. Marlene H. Dortch  
Secretary  
Federal Communications Commission  
445 12th Street, SW  
Washington, D.C. 20554

RE: MB Docket No. 07-51 -- Exclusive Service Contracts for Provision  
of Video Services in Multiple Dwelling Units and Other Real  
Estate Developments

**NOTICE OF EX PARTE PRESENTATION**

Dear Ms. Dortch:

On May 28, 2008, James Brabham and David Catania of OpenBand Multimedia, LLC, and I met with Rick C. Chesson, Legal Advisor to Commissioner Michael J. Copps.

During the meeting we discussed OpenBand Multimedia's position on issues pending in the further notice of proposed rulemaking portion of this proceeding. Specifically, we discussed OpenBand Multimedia's opposition to the proposal to prohibit bulk service agreements between providers of multichannel video programming services and community associations. In addition, OpenBand Multimedia proposed that small multichannel video programming providers be exempted from any such prohibition if the Commission enacts a prohibition against bulk service agreements. We also explained the important distinctions between the Commission's prior elimination of exclusive access agreements between cable operators and owners of multiple dwelling units and other real estate developments (adopted previously in this proceeding) and the pending proposal to prohibit bulk service agreements between cable providers and homeowners associations. Unlike exclusive access agreements which prohibit competing providers of multichannel video programming distribution service from having the ability to provide service to residences subject to such restrictions, bulk service agreements do not prohibit any provider of MVPD service from offering their services. However, bulk service agreements do enable entrepreneurial, innovative companies like OpenBand to invest in state-of-the-art broadband facilities and to deliver services which provide genuine value to consumers.

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OpenBand Multimedia's presentation was consistent with its comments previously filed in this proceeding. A summary of OpenBand Multimedia's presentation was provided to Mr. Chessen. A copy of that presentation summary is attached hereto and should be included in the record of this proceeding.

Pursuant to Section 1.1206 of the Commission's rules, this letter is being filed electronically. Please direct any questions regarding this presentation to undersigned counsel for OpenBand Multimedia.

Sincerely,

A handwritten signature in black ink, appearing to read 'M. Brecher', with a long horizontal line extending to the right.

Mitchell F. Brecher

Attachment

cc: Mr. Rick C. Chessen  
Mr. James Brabham  
Mr. David Catania

**PRESENTATION OF OPENBAND MULTIMEDIA, LLC**  
**FEDERAL COMMUNICATIONS COMMISSION**  
**MB DOCKET NO. 07-51**  
**MAY 2008**

OpenBand Multimedia, LLC provides high speed broadband services (voice, data, video, Internet) to three housing communities in Loudoun County, VA.

OpenBand is a subsidiary of M.C. Dean, Inc. M.C. Dean is neither a builder nor a developer, but is a leading engineering and integration provider for complex electrical, electronic and telecommunications systems. Both M.C. Dean and OpenBand are headquartered in Dulles, VA.

Using the product name Smart Neighborhoods™, OpenBand delivers Internet access at up to 100 Mbps as well as a full package of video services and full-featured telephone service. OpenBand's network delivers such high speeds because it is a fiber to the premises network.

It offers service through bulk agreements with each of the community associations. Those bulk agreements (which were competitively bid by the community associations) provide significant cost savings to OpenBand which makes possible substantial price savings to the residents. Saved costs include

- Marketing
- Billing/collection
- Record keeping
- Program acquisition
- Operating costs

For example: bulk agreements enable service providers to aggregate larger numbers of subscribers which lower their per subscriber programming costs in a manner similar to how small cable operators have established buying consortia to reduce their program acquisition costs to more competitive levels. This results in more programming and more favorable prices to residents than would otherwise be available.

As a result, residents of those communities receive video services which provide greater value than those available from other service providers serving nearby communities. In fact, since 2002, OpenBand prices have risen on average only 1.1 percent per year.

Despite high levels of customer satisfaction, a small number of customers have filed comments with the FCC regarding OpenBand's prices, its service quality, and the bulk service agreement. On May 20, OpenBand filed a response to those comments which is being provided during this presentation.

Legal question: whether Section 628 or any other provision of the Communications Act (including the Commission's "ancillary authority" derived from Title I of the Act)

provides a basis for regulating bulk service agreements between service providers and community associations? Unlike exclusive access agreements, bulk billing agreements do not restrict access by competitors.

Policy question: whether there is any public interest benefit to banning such bulk service agreements (*i.e.*, taking away from residents the benefits of competitively bid discounted pricing for state-of-the art services to advance some undefined source of “competition”).

Competition Policy: Irrespective of what policies might be applicable for the “cable giants,” bulk service agreements have created opportunities for entrepreneurial companies to enter the video and Internet services market place notwithstanding the residual market power enjoyed by major entrenched cable operators. Also such bulk agreements have made possible “triple play” service packages at prices which deliver value to consumers.

## SOLUTIONS

- Leave Well Enough Alone No interference with existing and future bulk service agreements
- Small Provider Exemption If the FCC feels a need to regulate such agreements, then exempt from any restrictions “small” systems with “small” being defined as those which serve fewer than 50,000 customers in the aggregate and fewer than 10,000 customers in any single community.
- Reasonable Term Limits Limit duration of such bulk service agreements to a reasonable period but with reasonable renewable rights upon agreement of the association and the provider.
- Deference to State Law what really is involved are questions of property rights and housing policy which normally are covered by state laws. Many states have enacted laws which govern community associations and video access agreements. States should have discretion to determine how to best balance the competing concerns of developers, community associations and residents, and video service providers, based on the specific circumstances of each state.